

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HUY THE LUU,

Petitioner,

v.

ROBERT GOWER, Warden,

Respondent.

No. C 14-044 SI (pr)

**ORDER DENYING REQUEST FOR
COUNSEL**

In an order filed May 19, 2014, the court dismissed the petition for writ of habeas corpus with leave to file an amended petition by June 27, 2014. At petitioner's request, the court extended the deadline for the amended petition to July 31, 2014, and then to September 19, 2014. To date, petitioner has not filed an amended petition for writ of habeas corpus.


Petitioner has requested appointment of counsel. A district court may appoint counsel to represent a habeas petitioner whenever "the court determines that the interests of justice so require" and such person is financially unable to obtain representation. 18 U.S.C. § 3006A(a)(2)(B). The decision to appoint counsel is within the discretion of the district court. *See Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986). Appointment is mandatory only when the circumstances of a particular case indicate that appointed counsel is necessary to prevent due process violations. *See id.* On the record now before the court, appointment of counsel is not warranted. Petitioner may not have exhausted state court remedies for any claim, and this action cannot go forward in federal court if there is no exhausted claim. The reason it appears to be a fully unexhausted petition is because petitioner's appellate attorney filed a *Wende* brief and his petition for review requested that the California Supreme Court conduct an

1 "independent *Wende* review." Docket # 1-3 at 7. A *Wende* brief, by its very nature, does not
2 exhaust any federal constitutional claims. *See People v. Wende*, 25 Cal. 3d 436 (1979) (counsel
3 who concludes that an appeal would be frivolous files a brief with the appellate court that
4 summarizes the procedural and factual history of the case, and requests that the appellate court
5 independently examine the record for arguable issues). This court will not appoint counsel in
6 a case that cannot go forward in federal court. Until petitioner presents an amended petition that
7 the court can understand and that looks like it can proceed in federal court, the court cannot
8 determine that the interests of justice require appointment of counsel. The request for
9 appointment of counsel is DENIED. Docket # 9.

10 Petitioner must file an amended petition for writ of habeas corpus by **October 20, 2014**
11 or this action will be dismissed. This deadline will not be further extended because, by the time
12 it arrives, petitioner will have had more than four months to prepare the document.

13 IT IS SO ORDERED.

14 DATED: September 26, 2014



SUSAN ILLSTON
United States District Judge